

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 1108 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE ANANT S.DAVE**

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Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?

2 To be referred to the Reporter or
not ?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to
the civil judge ?

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RAMESH @ LUCKY SHAKARAJI VANZARA - Applicant(s)**Versus****DEPUTY COMMISSIONER OF POLICE & 1 - Respondent(s)**

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Appearance :

MR NM KAPADIA for Applicant(s) : 1,

RULE SERVED for Respondent(s) : 1,

Mrs. Hansa B. Punani, Ld. A.P.P. for
Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 21/10/2005

ORAL JUDGMENT

1. This petition under Article 226 of the Constitution of India challenges the order of externment dated 29.05.2005 passed by the respondent no.2 in exercise of powers conferred under Section 56(b) of the Bombay Police Act, 1951 and also the order dated 08.08.2005 passed by the appellate authority, respondent no.1 herein in exercise of powers under Subsection (3) of Section 60 of Bombay Police Act, 1951 confirming the earlier order of the externing authority as unjust, unreasonable, arbitrary and violative of articles 14, 19 and 21 of the Constitution of India.

2. The petitioner was given show cause notice dated 15th July, 2003 under the provisions of the Act, whereby the petitioner

was asked to show cause as to why he should not be externed for a period of 2 years from the limit of Ahmedabad Police Commissioner, Ahmedabad City and Rural, Gandhinagar, Kheda and Mehasana on the ground that the petitioner has indulged into usage of force and indulged into violent activities and has become menace to the member of the society of the locality in which he resides.

3. A preliminary reply was submitted by the petitioner on 05.08.2003 and from 16th August, 2003 to 21st January, 2004, 10 witnesses were examined and ultimately final written arguments were submitted by the petitioner on 25.02.2004. Alongwith the said reply, certain decisions of this court on the subject matter were also annexed and relied on. It was submitted that exercise of powers by the externing authority is not based on correct appreciating of evidence and no

materials exist, to extern the petitioner and the allegations levelled against him in the show cause notice, are vague. It was also contended that the witnesses examined by the petitioner stated about peaceful and non-violent activities of the petitioner. Therefore, it was urged to drop the proceedings pursuant to the show cause notice dated 15.07.2003.

4. However, the externing authority was not debarred by written statements by the petitioner and on 4th February, 2005 after reproducing the allegations levelled in the show cause notice and considering the relevant records of the case, it was found that the activities of the petitioner are detrimental to law and order and he was required to be externed from City limit of Ahmedabad Municipal Commissioner Ahmedabad Rural, Gandhinagar, Kheda and Mahesana for a

period of two years.

5. Being aggrieved by and dissatisfied with the above said order the appeal was preferred under Section 60 of the Act and various contentions were raised i.e. that the proceedings of externment required to be completed within 6 months, as per the decision of the Hon'ble Gujarat High Court and there exist no material to exercise powers under Section 56 of the Act. There is a delay of more than 1 year in passing the order of externment and for externing the petitioner from contiguous districts of Ahmedabad City viz. Ahmedabad Rural, Gandhinagar, Kheda and Mahesana no material existed and therefore, the exercise of power is unreasonable and restrict the fundamental right of the externee guaranteed under Article 19 and 21 of the Constitution of India is unreasonable in any manner and

therefore, the order of externment requires to be quashed and set aside.

6. However, the appellate authority after considering grounds raised in the memo of appeal and the representation submitted to the authority, confirmed the order of externment. It was held that the case law cited by the learned advocate for the appellant was not applicable in the facts and circumstances of the case.

7. Being aggrieved and dissatisfied with the order of Appellate Authority confirming the order of externment passed by the externing authority, petitioner has preferred this petition under Article 226 of the Constitution of India.

8. Learned advocate Shri Kapadia appearing for the petitioner has raised the ground

interalia that there is a substantial delay in passing the order of externment, since show cause notice was issued as early as on 15.07.2003 and thereafter preliminary reply, examination of 10 witnesses by the petitioner and even final written arguments/submissions were made before the Competent Authority on 25th April, 2004. Thereafter, more than 13 months have passed and on 29.05.2005 the order of externment came to be passed which is nothing but unreasonable and arbitrary exercise of powers since the requirement under Section 56 of the Act to exercise the powers, the person who is to be externed, by the authority against whom allegations of indulging into illegal and violent activities are levelled, immediate steps are required to be taken. The word in the section is a person who is engaged in the offences or about to be engaged, in such circumstances if the final order is passed, after 13 months from the

submissions and final written arguments such exercise is fatal to the impugned orders. The above aspect is not also taken into consideration by the appellate authority and mechanically passed the order without application of mind and confirmed the externment of the externee, and therefore, both the orders are required to be quashed and set aside.

9. The learned A.P.P. Mrs. Hansa B. Punani defended both the orders of externing authority as well as the order of appellate authority submitting that the concerned authorities have justified in passing the order of externment since the criminal activities carried out by him in the area were sufficient enough to warrant exercise of powers under Section 56(b) of the Act. According to her, there was adequate and enough materials with the competent authority

to arrive at the conclusion that except the remedy of externment under Section 57 (b), no other remedy is available so as to prevent the externee from indulging into such activities. She has further submitted that there was no statutory obligation upon the appellate authority to give detailed and reasoned order, particularly the record of the whole case was perused and considered and thereafter the order under challenged in the appeal was passed. Therefore, according to her, no interference is called for and the decision of the externing authority as well as of the appellate authority do not require any interference by this Court in exercise of powers under Article 226 of the Constitution of India.

10. Having heard the learned counsel for the parties and on perusal the records of both the authorities i.e. competent authority as

well as the appellate authority, it is evident that the orders impugned passed by the externing authority is almost passed after 13 months from the date of submitting written submissions by the petitioner. Even there appears to be no case registered and earlier the petitioner who was detained under PASA was ordered to be released on 02.03.2005 as per the order passed in S.C.A.No.14382 of 2004. Considering the above fact, there was no other justifiable reason for the concerned authority to again extern the petitioner from 7th October, 2004 i.e. the date on which the petitioner was detained and till his release on 2nd March, 2005. Virtually for five months in jail, for such period, no allegations of any illegal or violent activities alleged. The delay remains, unexplained by the respondent.

11. In these circumstances, the only ground

as urged by the learned advocate for the petitioner that delay of 13 months in passing the order of externment is sufficient to quash and set aside the order of externing authority dated 04.02.2005 and the order of appellate authority 08.08.2005 are hereby ordered to be quashed and set aside as unreasonable, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India. Petition is allowed. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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